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No. 499

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

SANDERS BROTHERS RADIO STATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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The Solicitor General, on behalf of the Federal Communications Commission, hereinafter referred to as the Commission, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above-entitled cause on January 23, 1939, reversing and remanding said cause to the Commission for the purpose of making findings of fact upon certain issues specified by the Court.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 572) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 23, 1939. A petition for rehearing filed by the Commission was denied on August 2, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The respondent appealed from a decision of the Commission granting to another applicant a permit for the construction of a radio broadcasting station in the same territory in which the respondent operated a station under a license issued by the Commission. The respondent had intervened in the proceeding before the Commission and opposed the issuance of the permit on the ground that the construction of the new station would result in competition which would inflict pecuniary loss upon respondent. The questions are:

1. Is the respondent an "aggrieved person whose interests are adversely affected" by a decision of the Commission, within the meaning of Section 402 (b) (2) of the Communications Act, so that the Court of Appeals had jurisdiction to entertain the appeal?

2. Was the Commission obligated to make findings of fact on the issue of whether the granting of the permit would inflict financial loss upon the respondent, and in their absence should the Commission's decision granting the construction permit be set aside as being arbitrary and capricious?

STATUTE INVOLVED

Section 319 of the Communications Act of 1934, c. 652, 48 Stat. 1064, as amended May 20, 1937, c. 229, 50 Stat. 189, provides:

> (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission upon written application therefor. The Commission may grant such permit if public convenience, interest, or necessity will be served by the construction of the station. This application shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of

transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the

granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit.

Section 402 (b) of the Act provides:

> An appeal may be taken in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:
>
> (1) By any applicant for a construction permit for a radio station * * * whose application is refused by the Commission.
>
> (2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

Other pertinent provisions of the Act are printed in the Appendix, *infra*, pages 17–27.

STATEMENT

The respondent, Sanders Brothers Radio Station, was the licensee of Station WKBB, located at East Dubuque, Illinois (R. 1). On January 20, 1936, Telegraph Herald filed an application for a construction permit to erect and operate a broadcast station at Dubuque, Iowa, on the frequency 1340 kc. with a power output of 500 w, to operate

during daytime hours only (R. 8). The application was designated for hearing, and notice of the time and place of hearing and the issues to be determined were given the applicant (R. 23–26). On August 18, 1936, the respondent filed a petition to intervene in the proceeding (R. 27), alleging that Station WKBB, of which it is the licensee, derives its revenue principally from the City of Dubuque, Iowa, and that there was insufficient advertising revenue available in Dubuque to support an additional broadcast station.

At the time the Telegraph Herald application was designated for hearing, respondent had pending before the Commission an application for a construction permit to move the transmitter and principal studios of its broadcast station, WKBB (then operating at East Dubuque, Illinois), across the Mississippi River to Dubuque, Iowa, and, in addition, to install a new antenna and ground system in connection with this station (R. 30).

On September 14, 1936, a hearing was regularly held at Washington, D. C., in a consolidated proceeding on both of the applications, before an examiner appointed by the Commission. Both applicants appeared and offered evidence in support of their respective applications. (R. 39 *et seq.*) The respondent introduced evidence tending to show that prior to the hearing its station had operated at a financial loss (R. 450). This was the only evidence offered by respondent in support of

its contention that the granting of the construction permit would inflict financial loss upon it.

The examiner submitted his report on October 31, 1936, in which he recommended that the application for a construction permit filed by the Telegraph Herald be denied and that the application of the respondent be granted (R. 485). The Telegraph Herald filed exceptions to the examiner's report (R. 486), and oral argument was requested by both applicants (R. 486, 489). On February 11, 1937, oral argument was heard before the Broadcast Division of the Commission (R. 490).

The Broadcast Division entered its final order on July 2, 1937, granting the applications of both the respondent and the Telegraph Herald, effective July 27, 1937 (R. 494). On July 30, 1937, the Broadcast Division handed down its Statement of Facts and Grounds for Decision (R. 496). The Commission made no findings upon the issue of financial loss tendered by respondent's petition.

Respondent filed a petition for rehearing before the full Commission on the decision of the Broadcast Division granting the application of Telegraph Herald for a construction permit (R. 510). Thereafter, on December 8, 1937, the petition for rehearing was denied without opinion by the full Commission (R. 569).

On December 14, 1937, the respondent appealed from the order of the Commission granting the application of Telegraph Herald to the United States

Court of Appeals for the District of Columbia and asked the court to issue a stay of the Commission's order pending the determination of the appeal (R. 1). A stay was granted on December 23, 1937. On March 17, 1938, the Telegraph Herald filed a petition to intervene, which was granted by the court (R. 4). Motions to dismiss were filed by the Telegraph Herald and the Commission on January 10, 1938, and January 24, 1938, respectively.

On January 23, 1939, the Court of Appeals reversed and remanded the case to the Commission upon the following grounds: (1) The respondent was a person aggrieved whose interests are adversely affected, within the meaning of Section 402 (b) (2) of the statute and that accordingly the court had jurisdiction to entertain the appeal. (2) The Commission erred in failing to make findings on the issue as to whether the granting of the construction permit would inflict economic injury upon respondent; in the absence of such findings the Commission's decision granting the construction permit was arbitrary and capricious and should be set aside.

The Commission filed a petition for rehearing, which was denied on August 2, 1939 (R. 578).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

(1) In holding that it had jurisdiction to decide the appeal.

(2) In holding that the Commission's decision to grant the application must be supported by formal findings of fact.

(3) In holding that the Commission must make findings of fact with respect to the competitive effect on the respondent's financial condition of the proposed operation of the new station before it may grant a permit for its construction.

(4) In holding that the Commission's decision to grant the application was arbitrary and capricious because not supported by findings as to the probable competitive effect of the new station on the respondent's financial condition.

(5) In failing to dismiss the appeal.

(6) In setting aside the decision of the Commission granting the permit to build a new station.

(7) In remanding the case to the Commission with directions to make formal findings of fact on the question of what the competitive effect of the proposed operation of the new station would be on the financial condition of the respondent.

REASONS FOR GRANTING THE WRIT

I

The decision below raises questions of large public importance which should be decided by this Court. The effect of the decision below is to confer upon a licensee under the Communications Act the legal right to object to the construction of a competitive station on the ground that competition

will lead to financial loss, and to compel the Commission to grant or deny applications for broadcast licenses according to the economic effects the competition of the proposed new station would have upon existing licensees. The standards guiding issuance of broadcast licenses lie at the heart of the Act, and under Section 402 (b), *supra*, the question can be raised only in the court below. Whether the court below, on the one hand, or the Commission, on the other hand, has correctly interpreted the Act, it seems plain that final resolution of this controversy should come from this Court. We shall, however, indicate briefly some of the reasons which show the court below to have erred.

1. The statute gives the competing licensee no right to object to the construction of a competing station on the ground that the competition will lead to financial loss. Not only is there no express provision but the implications point to the contrary conclusion. (a) Section 319 does not require the Commission to hold a hearing before granting or denying a broadcast construction license, while Section 309 (a) requires a hearing only if the Commission upon application for a station license determines that it should not be granted. The Act intends, then, to guard the right to protest the denial rather than the granting of licenses, and in this regard at least takes no note of competitive injuries. (b) The Act sets up the same standards of "public convenience, interest or necessity" for

the licensing of all other types of radio stations, and prescribes the same licensing procedure as for broadcast stations. Economic injury to competitors is plainly inapplicable, for example, in the case of amateur and police stations. (c) Section 307 (d) requires that applications for renewal be "governed by the same considerations and practice which affect the granting of original applications." The decision below would seem to mean that a successful broadcast station, drawing business from its competitors, should be denied a renewal license. (d) The decision of the court below that an existing licensee could assert its economic interest in freedom from competition assumes a property interest in the license which is contradicted by the statutory delineation of its nature. It is plain enough that the statute contemplates a privilege which is neither exclusive nor absolute.[1]

2. Section 313, however, provides a more fundamental answer to the decision below. That section declares that the antitrust laws shall apply

[1] The license is granted for a relatively short period of time (Section 307 (d)); it confers no property right in the use of the facilities licensed (Section 309 (a) (1)); it may not be transferred or assigned without the written consent of the Commission (Section 310 (b)); the grant is strictly limited to its terms and may be revoked or modified as the public interest requires (Section 312 (a)); applicants for a license are required to sign "a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise" (Section 304).

to interstate radio communication, and that a license may be revoked for their violation. This provision contradicts any argument that the Act is designed to substitute a regulated monopoly for the normal competitive safeguards. Competition is not only expected but is affirmatively to be enforced. Indeed, this is the very foundation of the radio broadcast industry under the Act.[2] The Act confers no authority on the Commission to regulate the advertising prices, the financial affairs, or the business practices of radio broadcast stations. Instead, reliance is placed upon the competitive control which is expected to follow from the fact that advertising revenues will roughly be fixed by the ability of a station to attract and hold a listening audience.[3] The distinction drawn by the court below between ordinary competition and that which will defeat the ability of the licensee to carry on (R. 574) is unwarranted. If competition is to be effective, it must always contain the threat, and

[2] The legislative history of the Communications Act of 1934 is barren of any suggestion that the radio broadcast industry was intended to be exempt from the usual forces of a competitive economy. See the report of the Senate Committee, Senate Report No. 781, 73d Congress, 2d Session, and the report of the Conference Committee, House Report No. 1918, 73d Congress, 2d Session.

[3] A discussion of the so-called American System of Broadcasting is contained in a report of the Chairman of the Federal Radio Commission, pursuant to Senate Resolution No. 129, 72d Cong., 1st Sess., Senate Document No. 137, p. 36, 72d Cong., 1st Sess.

must sometimes produce the result, of a destructive competition.

3. The administrative construction is uniform and long continued. Throughout the history of the Commission and its predecessors, the Federal Radio Commission and the Secretary of Commerce, not a single instance is known of a refusal to issue a license for a new radio station because the competition created by the operation of that station would inflict financial loss upon others licensed under the Act. The contemporaneous administrative construction is, under familiar canons, entitled to great if not compelling weight. *Heath* v. *Wallace*, 138 U. S. 573, 582; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315.

4. The decision of the court below that a right to be protected against the effects of competition can be implied from the statute as a whole is in conflict with long-settled principles. The holder of a license or a franchise to conduct a business has no legal standing to object to the action of a public authority in authorizing a competitive enterprise, no matter how severe the economic injury resulting from the competition may be. *Charles River Bridge* v. *The Warren Bridge*, 11 Pet. 420; *Railroad Company* v. *Ellerman*, 105 U. S. 166, 173–174; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 483; *Tennessee Electric Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118. Where, as here, the license relied upon is neither exclusive nor abso-

lute, the case for application of this rule is even stronger than in the decisions cited.

5. Section 402 (b) of the Act, it is true, provides that an appeal may be taken to the court below not only by an applicant for a construction permit but also "by any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application." This section plainly does not authorize persons without an appropriate legal interest to appeal a decision granting the license, and the foregoing paragraphs show that a licensee fearing competitive damage has no such interest.

II

The court below held that the Commission's action in issuing the construction permit was arbitrary and capricious because it did not make findings on the issue of economic injury tendered by the respondent. This, in the event economic injury should be held material to action on the application, also raises a question which should be decided by this Court. Problems as to the nature of the findings which the Commission must make when it issues or denies a construction permit under Section 319 are of great importance in the administration of the statute, since the Commission would be subjected to an impossible burden if it were required to make specific findings upon each relevant ground for granting each of the many thousand applications for licenses which are filed annually.

The only evidence presented by the respondent

in support of its claim that the construction of a new station would inflict financial injury upon it was evidence that heretofore respondent has been unable to operate its station at a profit. The Commission made no findings on the basis of this evidence, and necessity (R. 504). The court below the permit would serve the public interest, convenience, and necessity (R. 504). The court below held that despite this finding the Commission's action was fatally defective because the Commission did not make findings on the issue of economic injury. We submit that, even if it be assumed that respondent had legal standing to object to the issuance of the license to another, this holding is erroneous. Section 319 of the statute does not require the Commission either to hold a hearing or to make findings when it grants or denies a construction permit; indeed Section 309 (a) in terms authorizes the Commission to grant the application for the correlative station license upon examination of the application. In the absence of a legislative direction to the contrary, the Commission was under no obligation to make any findings when it issued the construction permit. Compare *Assigned Car Cases*, 274 U. S. 564; *United States* v. *Louisiana*, 290 U. S. 70; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457; *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari to the United States Court of

Appeals for the District of Columbia should be granted.

ROBERT H. JACKSON,
Solicitor General.

WILLIAM J. DEMPSEY,
General Counsel,
Federal Communications Commission.

NOVEMBER 1939.

APPENDIX

Communications Act of 1934, c. 652, 48 Stat. 1064, as amended June 5, 1936, c. 511, Sec. 2, 49 Stat. 1475, and May 20, 1937, c. 229, 50 Stat. 189:

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

* * * * * *

(h) "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

* * * * * *

SEC. 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the

same Territory, possession, or district; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

* * * * * *

SEC. 304. No station license shall be granted by the Commission until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

* * * * * *

SEC. 307. (a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant there-

for a station license provided for by this Act.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) The Commission shall study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to particular types or kinds of non-profit radio programs or to persons identified with particular types or kinds of non-profit activities, and shall report to Congress, not later than February 1, 1935, its recommendations together with the reasons for the same.

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications.

(e) No renewal of an existing station license shall be granted more than thirty

days prior to the expiration of the original license.

* * * * *

SEC. 309. (a) If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

(b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

* * * * *

SEC. 311. The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313, and is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation.

* * * * *

SEC. 313. All laws of the United States, relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil

of criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however,* That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

SEC. 314. After the effective date of this Act no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this Act, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any in-

terest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, by purchase, lease, construction, or otherwise, directly or indirectly acquire, own, control, or operate any station or the apparatus therein, or any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case the purpose is

and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

* * * * * *

SEC. 402. (a) The provisions of the Act of October 22, 1913 (38 Stat. 219), relating to the enforcing or setting aside of the orders of the Interstate Commerce Commission, are hereby made applicable to suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (except any order of the Commission granting or refusing an application for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, or suspending a radio operator's license) and such suits are hereby authorized to be brought as provided in that Act.

(b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission.

(c) Such appeal shall be taken by filing with said court within twenty days after the decision complained of is effective, notice in writing of said appeal and a statement of the reasons therefor, together with proof of service of a true copy of said notice and statement upon the Commission. Unless a later date is specified by the Commission as part of its decision, the decision complained of shall be considered to be effective as of the date on which public announcement of the decision is made at the office of the Commission in the city of Washington. The Commission shall thereupon immediately, and in any event not later than five days from the date of such service upon it, mail or otherwise deliver a copy of said notice of appeal to each person shown by the records of the Commission to be interested in such appeal and to have a right to intervene therein under the provisions of this section, and shall at all times thereafter permit any such person to inspect and make copies of the appellant's statement of reasons for said appeal at the office of the Commission in the city of Washington. Within thirty days after the filing of said appeal the Commission shall file with the court the originals or certified copies of all papers and evidence presented to it upon the application or order involved, and also a like copy of its decision thereon, and shall, within thirty days thereafter, file a full statement in writing of the facts and grounds for its decision as found and given by it, and a list of all interested persons to whom it has mailed or otherwise delivered a copy of said notice of appeal.

(d) Within thirty days after the filing of said appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the decision of the Commission complained of shall be considered an interested party.

(e) At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however*, That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.

(f) The court may, in its discretion, enter judgment for costs in favor of or against an

appellant and/or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

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SEC. 414. Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

U. S. GOVERNMENT PRINTING OFFICE: 1939